

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1933 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DECEASED MERABHAI GANDABHAI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR

Appearance:

MR RN SHAH for Petitioners

Ms. S.D.Talati, Asstt.G.P. for Respondent No. 1

SERVED for Respondent No. 2, 6, 7

MR JITENDRA MALKAN for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/02/98

ORAL JUDGEMENT

Thsis petition is directed against the order dated 17th June, 1987 made under section 8(4) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the "Act"). by the competent authority in

respect of the land bearing survey No. 165 admeasuring about 8396 sq.mtrs. situated at Khokhara Mahemdabad (hereinafter referred to as "the land") within the urban agglomeration of Ahmedabad. The facts leading to the present petition are as under :

2. The land belong to one Dwarkadas Patel, respondent No. 2 herein who has died pending this petition and is represented through his heirs and legal representatives. On 11th June, 1973, late Dwarkadas executed an agreement to sell the land in favour of one Merabhai Gandabhai, the predecessor of the present petitioners. Said Merabhai Gandabhai died on 3rd April, 1974. The agreement to sell the land never culminated into a sale deed. However, pursuant to the agreement to sell, said Merabhai was put in possession of the land. Even after the death of Merabhai Gandabhai, possession of the land has continued with the heirs of Merabhai i.e. present petitioners. On commencement of the Act, late Dwarkadas made a declaration under section 6(1) of the Act (Annexure "C" to the petition). In the said declaration, late Dwarkadas included the land in his holding. It was stated that in view of the Banakhat executed in favour of Merabhai Gandabhai, possession of the land was handed over to Merabhai Gandabhai. It appears that the petitioner No. 2 also made declaration of his holding under section 6(1) of the Act wherein he too included the land in his holding. Petitioner No. 2 made an application for exemption under section 20(1) of the Act. Said application was processed and an exemption was granted on 19th January, 1980 in favour of Dwarkadas Gordhandas (Annexure "B" to the petition). Said exemption is still subsisting and has not been cancelled. While processing the declaration given by late Dwarkadas, under communication dated 15.4.80, late Dwarkadas was informed that the land was not eligible for exemption since it was agreed to be sold to the third party. After processing the declaration made by Dwarkadas, the impugned order (annexure "D" to the petition) was made under section 8 (4) of the Act. Under the said order, the land has been held to be surplus vacant land in the hands of Dwarkadas. Pursuant to the said order, I am informed, the final statement under section 9 of the Act was drawn and the notification under section 10(1) of the Act was issued and was published in the Government Gazette on 29th March, 1989. Notice under section 10(5) was given to late Dwarkadas on 27th December, 1989. When the possession of the land was sought to be taken over, same was resisted by the present petitioners and they challenged the order made under section 8(4) of the Act on 17th June, 1987 by filing the present petition. On

17th March, 1992, the petition was admitted to final hearing and an order to maintain status quo as on that day was also issued. It appears that after declaring the land to be surplus vacant land, same was disposed off under section 23 of the Act and was allotted to the Slum Clearance Board for the purpose of construction of houses for the weaker section of the society. The land was plotted and pieces of the lands were allotted to some such people. Some of those allottees made an application being Civil Application No. 1669 of 1992 for lifting the status quo ordered to be maintained by this Court on 17th March, 1992. This Court, under its order dated 16th September, 1992, lifted the status quo in respect of the part of the land admeasuring 2025 sq. mtrs. I am informed by Mr. Malkan learned advocate appearing for the said allottees that some 73 residential houses have been constructed on the said piece of land and some of them have already been occupied by the concerned allottees.

Learned advocate Mr. Shah has appeared for the petitioners and has submitted that the impugned order made under section 8(4) of the Act has been made in violation of the provisions of the Act and is, therefore, illegal and invalid. He has submitted that as a consequence all other proceedings of declaration of final statement and issuance of notification under section 10(1) of the Act and the publication of such notification under section 10(3) all are bad and are contrary to law and are a nullity. He has submitted that the land is an agricultural land and is being used exclusively for the agricultural purpose. The land, therefore, cannot be said to be urban land within the meaning of sec. 2(o) of the Act. The land, therefore, could not have been treated as a vacant land and the provisions of the Act did not apply in respect of the land. He has submitted that the petitioners are the holders of the land and were required to be served with a notice and draft statement prepared under section 8(1) of the Act as provided under section 8(3) of the Act. Further, the petitioners were also required to be served with a notice and the draft statement as provided under rule 5 of the Urban Land (Ceiling and Regulation) Rules, (hereinafter referred to as the "Rules"). Even otherwise, under section 20 (1) of the Act, the land has been exempted from the provisions of Chapter III of the Act and, therefore also, the land could not have been declared to be surplus vacant land.

Ms. Talati, the learned Asstt.GP has submitted that by issuing notification under section 10(1) of the Act and publishing it in the Government Gazette under

section 10(3) of the Act, the land has been finally vested in the Government free from all encumbrances. Any order made in respect of the land under the Act, therefore, cannot now be challenged. She has further submitted that in any view of the matter, the petitioners cannot be said to be the holders of the land and they were not required to be served with a notice and the draft statement as envisaged under section 8(3) of the Act. She has further submitted that the exemption on 19th January, 1980 was granted by mistake and the same ought not to have been granted.

It is undisputed that the land is agricultural land and is being used for agricultural purposes. It has been entered into revenue records as an agricultural land. It is not disputed that the area in which the land is situated has been included in the town planning scheme long after the commencement of the Act and has been earmarked as residential zone. Thus, in view of the definition of the urban land as incorporated in section 2(o) of the Act, the land could not be said to be the urban land on the date of the commencement of the Act. Same, therefore, could not have been declared to be surplus land. It is not disputed that the exemption granted in respect of the land on 19th January, 1980 is still subsisting and no action has been initiated to cancel the same. So long as the exemption granted by the State Government under section 20(1) of the Act is subsisting, the land could not have been subjected to the provisions of the Act and could not have been declared to be the surplus vacant land. The exemption is granted in respect of the land and not the holder [reference can be had to the judgment of this Court in the matter of heirs and legal representatives of the deceased Gordhandas Patel versus State of Gujarat and another (1996 (1) GLH 446)]. I cannot agree to the proposition that the petitioners being the holders of the land were required to be given notice and copy of the draft statement under section 8(3) of the Act. Be it noted that the petitioners are in possession of the land pursuant to the agreement for sale executed in favour of late Merabhai Gandabhai. Said agreement has not culminated into sale of the land. The petitioners, therefore, can neither be said to be owners of the land nor they can be said to be in possession of the land as owner or as tenant or mortgagee or under irrevocable power of attorney or under hire purchase agreement. Hence the petitioners cannot be said to be holding the land as defined under section 2(1) of the Act. [Reference can be had to the judgment of this Court in the matter of heirs and legal representatives of deceased Gordhandas Patel (supra)].

Rule 5 of the rules provides for the particulars to be contained in the draft statement to be prepared in form III. Sub-rule (2) thereof enjoins upon the competent authority to serve notice referred to in sub-sec. (3) of sec. 8 of the Act and the draft statement prepared under sub-sec. (1) of sec. 8 upon the holder of the vacant lands and all other persons so far as may be known who have or are likely to have any claim or interest in the ownership or possession or both in the vacant land. Thus, it is evident that the provisions contained in rule 5 in respect of service of notice is far wider than the one under section 8(3) of the Act. Sec. 8(3) refers to the service of notice to the person concerned alone. While rule 5 takes into its folds the other persons also who have or are likely to have any claim or interest in the ownership or possession of the vacant land. It is not disputed that the petitioners are in possession of the land since prior to the commencement of the Act. Hence, it cannot be gainsaid that the petitioners have a claim to possession of the land. Besides, I am informed that a suit for specific performance in respect of the land being Special Civil Suit No. 2 of 1992 is also pending before the learned Civil Judge, S.D., Ahmedabad Rural. Further, it was made known to the competent authority that the land was agreed to be sold to late Merabhai Gandabhai and the possession was handed over to him long before the commencement of the Act. I am, therefore, of the view that it was known to the competent authority that the petitioners were in possession of the land and had interest in the possession of the land and, therefore, it was imperative for the competent authority to serve a notice together with the draft statement prepared under sub sec. (1) of sec. 8 of the Act upon the petitioners. It is not disputed that no such notice has been given to the petitioners.

In above view of the matter, the impugned order dated 17th June, 1987 made under sub-sec.(4) of sec. 8 of the Act cannot be sustained. Same is, therefore, quashed and set aside and the further proceedings undertaken by the competent authority pursuant to the aforesaid order dated 17th June, 1987 (Annexure "D" to the petition) are, therefore, a nullity and are also quashed and set aside.

However, pursuant to the final statement prepared under sec. 9 of the Act and the notification issued under sec. 10(3) of the Act, the land vested in the Government and under the power conferred upon the Government under section 23 of the Act, the land has been disposed of in favour of certain people belonging to the weaker section of the society. The status quo ordered to

be maintained by this Court on 17th March, 1992 was lifted in respect of the piece of land admeasuring 2025 sq. mtrs. on 16th September, 1992. Since then, the constructions have been raised on the said piece of land and some of the residential units have been allotted to the concerned allottees. It would not be just, proper and expedient to disturb the possession of such allottees after such a long period. It is, therefore, ordered that nothing in this judgment shall apply to the piece of land admeasuring 2025 square metre in respect of which the order of status quo was lifted on 16th September, 1992.

Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

Vyas